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No. 486

In the Supreme Court of the United States

October Term, 1942

Charles E. Haldeman-Julius, petitioner,

v.

United States of America

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

CHARLES FAHY,
Solicitor General,
WENDELL BERGE,
Assistant Attorney General,
ROBERT S. ERDAHL,
Special Assistant to the Attorney General,

Department of Justice,
Washington, D. C.

In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 499

GEORGE E. BALDWIN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (Pet. App. A) is reported at 307 F. 2d 577.

JURISDICTION

The judgment of the Court of Appeals (Pet. App. A) was entered on July 26, 1962. A petition for rehearing was denied on September 12, 1962. (Pet. App. B.) The petition for a writ of certiorari was filed on October 10, 1962. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

QUESTION PRESENTED

Whether there was sufficient evidence on which the jury could find beyond a reasonable doubt that peti-

tioner willfully attempted to evade his taxes by understating his taxable income in his 1953 and 1954 tax returns.

STATUTES INVOLVED

Internal Revenue Code of 1939 (26 U.S.C. 1952 ed.):

> SEC. 145. PENALTIES.
>
> * * * * *
>
> (b) *Failure To Collect and Pay Over Tax, Or Attempt To Defeat Or Evade Tax.*—Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.
>
> * * * * *

Internal Revenue Code of 1954 (26 U.S.C. 1958 ed.):

> SEC. 7201. ATTEMPT TO EVADE OR DEFEAT TAX.
>
> Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution.

STATEMENT

Petitioner was charged in two counts with the willfull attempt to evade his individual income taxes by the filing of false and fraudulent income tax returns for the calendar years 1953 and 1954, in violation of Section 145(b) of the Internal Revenue Code of 1939 and Section 7201 of the Internal Revenue Code of 1954. The reported and correct taxable income and tax liability, as alleged in the indictment, are as follows (R. 1–2):[1]

	Income		Tax	
	Reported	Correct	Reported	Correct
1953	$6,473.23	$28,748.71	$162.00	$8,239.38
1954	1,072.92	42,230.72	None	19,278.20

The evidence showed that petitioner, in his tax returns for 1953 and 1954, radically understated his gross income. Petitioner's business gross income as reported in each return was based almost entirely on deposits made by petitioner to his accounts in certain banks during the respective years. (R. 8, 973; Govt. Exs. 1, 2, 150–A, 151–A.)[2] Investigation revealed, however, that petitioner received a great many payments which he did not deposit in these banks, and which he disposed of in part to pay business expenses, and in part to pay personal bills, to remodel his home,

[1] "R." refers to petitioner's appendix in the court below; "Supp. R." will be used to refer to the Government's appendix in that court.

[2] Government Exhibits 1 and 2 are the respective tax returns; Government Exhibits 150–A and 151–A, charts of deposited and undeposited items, are reproduced at Supp. R. 35–37 and 39–41, respectively.

and to buy rental property. (R. 62, 154–159, 176–178, 179–180, 182–190, 191, 192, 562, 563, 728, 809, 829, 857, 863, 891; Govt. Exs. 55, 81, 123, 131.) He also placed substantial monies in a bank account in the name of his brother, Albert Baldwin, and with an agent, Gerald Rock. (R. 182–189, 831, 866, 891.)

In proving the understatement of taxable income and of the taxes owed, the Government accepted the statement of business expenses reported in petitioner's returns (R. 511–512), and in fact discovered additional expenses of $14,690.80 for 1954 which were credited to petitioner (R. 348). The Government, through documents and the testimony of about fifty witnesses (R. 18–274), proved specific payments to petitioner for interests in oil and manganese ventures he was promoting, in the total sum of $34,884.07 for 1953 (Supp. R. 37; Govt. Ex. 150–A), and $47,021 for 1954 (Supp. R. 41; Govt. Ex. 151–A), and showed that these items were not reflected in petitioner's bank accounts and were not included in his tax returns (R. 307–522). When these undeposited and unreflected items are added to the gross business income reported, and this gross income is reduced by both the reported expenses and the additional expenses found by the Government, the correct adjusted gross income for 1953 is found to be $32,997.13, and for 1954, $33,403.12. (R. 522). In contrast, petitioner's returns reported $3,473.23 of adjusted gross income for 1953, and $1,072.92 for 1954. (Govt. Exs. 1, 2.)

Petitioner's returns were prepared by an attorney who testified (R. 7–18, 949–993, 1048–1059) that he was, in a general way, well acquainted with petition-

er's transactions. The attorney's testimony and a comparison of the total bank deposits with the reported gross income show, however, that the attorney based the gross income figures in the tax returns almost exclusively on the deposits in petitioner's bank accounts. Moreover, the attorney's testimony indicated that he was by no means fully informed as to petitioner's receipt of the undeposited sums in issue and as to the uses made of them by petitioner (*ibid.*)

ARGUMENT

In his petition, as in his brief below, petitioner confines himself largely to an argument on the facts, urging factual conclusions which the jury was not bound to accept, and which it in fact must be assumed to have rejected.

Petitioner's principal contention here (Pet. 46), as in the Court of Appeals, is that he had no taxable income at all during 1953 and 1954, but rather a net loss. He asserts (Pet. 33) that the government adopted the "basic fallacy" of treating as income "every dollar that passed through Defendant's hands," and that the government "would have the court believe that Defendant never had any expenses in the conduct of his business." The record flatly refutes those contentions. The testimony of Special Agent Ronat (R. 307–322) shows that he made a meticulous analysis, sifting out any possible duplication of receipts, as in the transfer of funds from one bank to another, and adding to petitioner's gross income only those sums received by him but not deposited in his bank accounts, and thus not reflected on the tax returns. As to business expenses, the Government conceded *all*

such expenses claimed on the returns,[3] and an additional $14,690.80 for 1954. (R. 348). Petitioner introduced 1,092 exhibits in an effort to show that he in fact operated at a great loss. The jury was warranted in not accepting his proof of staggering losses, since, as the court below concluded (Pet. App. 4, 5), petitioner's claimed disbursements for both years not only included "duplication of expenses, personal expenditures, investments of capital, and other non-deductible items" (e.g., "the cost of his and his family's personal living expenses, the costs of remodeling his home, and the purchase of an apartment building"), but also failed to recognize the reimbursement of petitioner for "whatever amount he actually expended for the partnership from its working capital."

Petitioner also argues (Pet. 9–12, 42, 47) that the jury should have concluded that he made a full disclosure of his income to his attorney, and that he acted in good faith on the attorney's advice. The short answer, as the Court of Appeals observed, is that the evidence showed (Pet. App. 5–6) "that defendant did not fully disclose the relevant facts to his attorney," and that this was, in any event, "a matter for the jury to determine under proper instructions" which were in fact given.

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[3] Petitioner's 1953 return (Govt. Ex. 1) reported total business expenses of $58,055.42, including items for gasoline, attorneys' fees, commissions, recording fees, hotels, travel, telephone, heat and lights, well costs ($30,661.85), and leasing costs ($13,950). His 1954 return (Govt. Ex. 2) reported total business expenses of $24,470.42, including $12,439.01 for well drilling, $4,650 for "lease costs," and $2,265.26 for legal, recording and engineers' fees.

CONCLUSION

No significant question of law appears in this case, nor anything to indicate that petitioner did not receive a fair trial. Therefore, it is respectfully submitted that the petition should be denied.

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